IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5078 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

NAKHATRANA TALUKA PANCHAYAT

Versus

ANUBHA JANUBHA ZALA

Appearance:

MR HS MUNSHAW for Petitioner

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 12/06/2001

ORAL JUDGEMENT

1. By way of this petition, the petitioner seeks to challenge the award of the Labour Court, Bhuj in Reference (LCG) No.183/96 whereby the petitioner is directed to reinstate the respondent-workman with full backwages. The said impugned award made in December 1997 was challenged by this petition dated 22.6.1998 and thereafter the hearing of this petition was adjourned

from time to time without obtaining any orders except that of admission and that of fixing final hearing on 21.11.1998. It appears that, even thereafter, the petitioner has not pressed for any interim relief with the result that the respondent-workman filed a civil application being Civil Application No.10835 of 2000 disposing which the Court directed the petitioner to pay to the respondent last drawn salary under the provisions of Section 17-B of the Industrial Disputes Act. It is stated at the Bar that after the said order dated 6.12.2000 was passed, the respondent is being paid last drawn salary under that order.

2. It was vehemently argued on behalf of the petitioner that the petitioner was not the employer of the respondent and that that was borne out by the documents annexed with the petition at Annexures-A, B and D. It was submitted that, in fact, at the time of termination of his service, the respondent was employed under Integrated Child Development Programme Officer whose office happens to be in the same compound where the office of the petitioner is located.

3. Going through the impugned award it is clear that the petitioner has not led any evidence, either oral or documentary, in support of a written statement which was filed and in which a plea was taken that the respondent was serving under the employer on a temporary basis as and when there was work. In absence of any evidence, the Labour Court had no alternative but to rely upon the evidence which was produced by the respondent and appreciating such evidence, the Court has arrived at the finding of fact to the effect that the respondent had completed 240 days of service and put in continuous service from 18.11.1988 to 10.12.1989. It is also concluded after appreciation of evidence that the relevant mandatory provisions of the Industrial Disputes Act were not complied and, therefore, the termination of service was void ab initio.

4. Thus, the petitioner who failed to lead any evidence even as it was appearing before the Labour Court and defending its case by filing a written statement, has made an attempt by way of this petition to construct an altogether different and new case without any basis in facts. It is also very difficult to appreciate the contrary stand adopted by the petitioner by admitting in its written statement that the respondent was employed by it as and when there was work and then disputing its very status as the employer. A subtle distinction is sought to be made out by the learned counsel for the petitioner

by submitting that the Integrated Child Development Programme Scheme was the employer and that the written statement in the Labour Court was filed in the name of that Scheme. Even if such distinction existed, it makes the case of the petitioner even worse insofar as the reference was made specifically against the present petitioner and the present petitioner has failed to point out to the Labour Court that it was not the employer. In any view of the matter, there is no substance in the petition and, therefore, the same is rejected. Rule is discharged with no order as to costs.

Sd/-

12.6.2001 (D.H.Waghela, J.)

(KMG Thilake)